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Attorneys for Morgan Hill Retain Venture LP

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In Re:

CIRCUIT CITY STORIES, INC., et al.

Debtors.

Chapter 11

Case No. 08-35653-KRH

(Jointly Administered)

**RESPONSE AND REQUEST FOR HEARING OF MORGAN HILL RETAIL VENTURE
LP TO LIQUIDATING TRUST'S EIGHTH OMNIBUS OBJECTION TO LANDLORD
CLAIMS (REDUCTION OF CERTAIN PARTIALLY INVALID CLAIMS,
RECLASSIFICATION OF CERTAIN MISCLASSIFIED CLAIMS, DISALLOWANCE
OF CERTAIN INVALID CLAIMS, DISALLOWANCE OF CERTAIN LATE FILED
CLAIMS AND DISALLOWANCE OF CERTAIN AMENDED CLAIMS); AND
DECLARATION OF MARIO ALBERT IN SUPPORT THEREOF**

Morgan Hills Retail Venture, LP (“Morgan Hills”) timely filed claim No. 10265 in the above referenced case in connection with the rejection of that certain Lease Agreement with Morgan Hill as Landlord, Circuit City Stores West Coast, Inc. as Tenant, in respect of the premises located at the North East Corner of Highway 101 and Cochrane Road in Morgan Hill, California (the “Morgan Hill Premises”). The Liquidating Trust has objected to Morgan Hill’s claim in its Eighth Omnibus Objection to Landlord Claims, et.al (“Eighth Omnibus Objection”). The amount of filed claim No. 10265 is \$1,690,135.98. The amount that the Trust has suggested in the Eighth Omnibus Objection be allowed is \$1,095,500.36.

Based on the facts of this case, the twenty seven-year length of the lease term remaining as of the date of the filing of this case, with extensions, and the landlord claim cap of 11 U.S.C. § 502(b)(6), the Trust’s objection is not well-taken and significantly understates the amount of Morgan Hills rejection damage claim against this Debtor. Even calculating on base rent of \$417,820.55 due under the lease for the first rent period, and excluding escalators, tax pass throughs, CAM pass-throughs and other obligations owed to Morgan Hill under the lease of the Morgan Hill Premises, the Trust’s alleged claim amount is understated. Three years of the base rent at \$417,846.55 per year equals \$1,253,539.60. Morgan Hill is entitled to additional amounts due under the lease, all capped by the three year maximum imposed by section 506(b)(6).

In support of its Response and Request, an in accordance with the Court’s Order Establishing Omnibus Objection Procedures and Approving the Form and Manner of Notice of Omnibus Objections dated April 1, 2009, Morgan Hill represents as follows:

1. The contact person for information regarding Morgan Hill and the Morgan Hill

Premises is as follows:

Mario Albert
General Counsel
Browman Development Company, Inc.
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2. A spreadsheet of the calculation used by Morgan Hill in connection with claim No. 10265 is attached hereto as Exhibit A to the Declaration of Mario Albert filed in connection with this response.

3. Morgan Hill is entitled to the benefit of the escalators contained in the out-years of the lease term under 11 U.S.C. § 502(b)(6)(A).

4. The Morgan Hill Premises has not been re-let and for purposes of state law expenses continue to accrue which constitute “Additional Rent” under the subject lease. Morgan Hill has paid expenses in connection with the Morgan Hill Premises, included those sums in the total rent due under the lease, and reflected those sums in that due to it under claim 10265.

WHEREUPON Morgan Hills respectfully requests that:

- A. Claim 10265 be allowed in the amount for which it was filed; or
- B. A hearing be held so that Morgan Hill can present evidence of the total amount of its claim in this case and the basis therefore.

Dated: April 7, 2011

By: /s/ Mark J. Friedman

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**DECLARATION OF MARIO ALBERT IN SUPPORT OF RESPONSE AND REQUEST
FOR HEARING OF MORGAN HILL RETAIL VENTURE LP TO LIQUIDATING
TRUST'S EIGHTH OMNIBUS OBJECTION TO LANDLORD CLAIMS (REDUCTION
OF CERTAIN PARTIALLY INVALID CLAIMS, RECLASSIFICATION OF CERTAIN
MISCLASSIFIED CLAIMS, DISALLOWANCE OF CERTAIN INVALID CLAIMS,
DISALLOWANCE OF CERTAIN LATE FILED CLAIMS AND DISALLOWANCE OF
CERTAIN AMENDED CLAIMS)**

I, Mario Albert, declare as follows:

1. I am an attorney licensed to practice law in all courts in the State of California. I am general counsel of Browman Development Company, the General Partner of Morgan Hill Retail Venture, LP ("Morgan Hill"). I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently thereto.

2. Morgan Hill entered into a Lease Agreement dated as of September 7, 2007 with Circuit City West Coast, Inc (the "Morgan Hill Lease") for 15,000 square foot space located in a shopping center located at the North East Corner of Highway 101 and Cochrane Road in Morgan Hill, California (the "Morgan Hill Premises"). I am informed and believe that a true and correct copy of the Morgan Hill Lease is attached to Morgan Hill's claim No. 10265 filed herein.

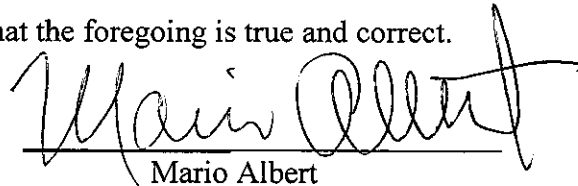
3. The term of the lease, with extensions was 30 years from the Commencement Date. The Debtor's bankruptcy case was filed approximately 6 months after the Commencement Date.

4. The Morgan Hill Lease contains rent escalators at the end of the 5th Lease Year, 10th Lease Year, 15th Lease Year, 20th Lease Year, and 25th Lease Year. The Morgan Hill Lease also provides for the pass through, to the Tenant, of certain CAM charges, tax installments and insurance installments incurrent by Morgan Hill in connection with the ownership and operation of the shopping center and the Morgan Hill Premises.

5. I have reviewed calculations of rent and additional rent due under the Morgan Hill Lease for the entire term of the lease. The calculations of rent and additional rent performed in respect of the Morgan Hill Lease are normal and customary for Browman Development Company and the limited partnerships for which it acts as a General Partner. I have also applied to the calculation of rent and additional rent due the limitations of 15% of the remaining term of the lease not to exceed three years that I have been advised apply under 11 U.S.C. § 502(b)(6). A true and correct summary of the calculations of future rent due under the Morgan Hill Lease is set forth on Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 6, 2011


Mario Albert